

Chapter 5

Special Forms of Permits

INTRODUCTION	5-1
MODULE 5-1: <u>Emergency Permits</u>	5-3
MODULE 5-2: <u>Research, Development, and Demonstration</u> <u>(RD&D) Permits</u>	5-6
MODULE 5-3: <u>Post-Closure Permits</u>	5-8
REFERENCES	5-13
CHAPTER 5 INDEX	5-15

[This Page Intentionally Blank]

SPECIAL FORMS OF PERMITS

INTRODUCTION

This chapter addresses special forms of RCRA permits including emergency permits; research, development, and demonstration (RD&D) permits; and post-closure permits.

Emergency permits and RD&D permits, if applicable to the waste management activity being performed, may be used in place of a hazardous waste treatment, storage or disposal permit. Post-closure permits on the other hand, are required during the post-closure care period at hazardous waste management facilities where wastes will remain in place after closure. Post-closure permits do not substitute for hazardous waste treatment, storage or disposal permits; they are applicable during a different phase of a unit's operation.

The permit modification provisions described in Chapter 4, and the permit expiration and continuation provisions described in Chapter 2, are applicable to post-closure permits as well as to operating permits. These provisions are not applicable to emergency permits or to RD&D permits because of the limited duration of these permits.

For the reasons explained in the bullets below, special forms of permits that are not discussed in detail in this chapter include: permits by rule, hazardous waste incinerator permits, permits for land treatment demonstrations using field test or laboratory analyses, interim permits for underground injection control wells, and permits for boilers and industrial furnaces burning hazardous waste.

- The permit by rule provisions of 40 CFR 270.60 eliminate the need for some facilities to submit full RCRA permit applications. These provisions apply to the following facility types, none of which is a facility type for which DOE would seek a RCRA permit:
 - Underground injection wells with permits under the Safe Drinking Water Act;
 - Publicly owned treatment works (POTWs) with National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act; and
 - Ocean disposal barges or vessels with ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

DOE would not seek a RCRA permit for a UIC well because DOE neither owns nor operates active hazardous waste or RMW underground injection wells. DOE would not seek a RCRA permit for a POTW because the definition of POTW excludes Federal agencies as owners of such facilities. Also, it is unlikely that

DOE would operate a POTW owned by a State or municipality. DOE would not seek an ocean dumping permit because DOE does not own or operated any ocean disposal barges or vessels.

- Special forms of hazardous waste incinerator permits (40 CFR 270.62) were discussed in Submodule 2-2-2 of Chapter 2.
- Permits for land treatment demonstrations using field test or laboratory analyses (40 CFR 270.63), interim permits for underground injection control wells (40 CFR 270.64), and permits for boilers and industrial furnaces burning hazardous waste (40 CFR 270.66) are not discussed in this chapter because they are not applicable to the hazardous waste management units owned by DOE.

MODULE 5-1: Emergency Permits

Emergency Permit
Addresses an Imminent and
Substantial Threat to
Human Health or the
Environment

A regulator may issue an emergency permit to a DOE facility to address an imminent and substantial threat to human health or the environment. The permit may be issued to:

- a non-permitted facility to allow treatment, storage, or disposal of a hazardous waste, or
- a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

Emergency Permit Only
Lasts for 90 Days

The permit enables the facility to treat, store or dispose of hazardous waste for up to 90 days. Exhibit 5-1 presents the regulatory requirements applicable to emergency permits.

At DOE sites, emergency permits are used to address immediate safety problems. For example, DOE's Savannah River Site obtained an emergency permit to allow a vendor to come onsite and deactivate some ether, picric acid, and other chemicals that had begun to form peroxides presenting an explosion hazard. Emergency permits may also be used to detonate munitions that are too dangerous to be moved to interim status or permitted open burning/open detonation units.

If the Situation Could Take
Longer Than 90 Days to
Address, an Exclusion From
RCRA Permitting May be
Authorized

An emergency permit cannot be used to address an imminent and substantial threat to human health and the environment if the actions required to address the threat will take more than 90 days to complete. DOE managers responsible for responding to imminent and substantial threats to human health and the environment that may require more than 90 days to address should contact the appropriate regulatory agency to determine if the situation meets the conditions for an exclusion from RCRA permitting under 40 CFR 270.1(c)(3). This

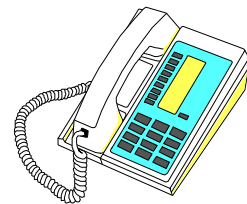


EXHIBIT 5-1
REGULATORY REQUIREMENTS APPLICABLE TO
EMERGENCY PERMITS (40 CFR 270.61)*

Type of Requirement	Requirement (Citation)
Criterion for Issuance of an Emergency Permit	Notwithstanding any other provision in 40 CFR part 270 or part 124, the regulator may issue an emergency permit in the event that he or she finds an imminent and substantial endangerment to human health or the environment [40 CFR 270.61(a)].
Form of Permit	The permit may be oral or written. If oral, it must be followed in five days by a written emergency permit [40 CFR 270.61(b)(1)].
Duration/Term of Permit	The permit may not exceed 90 days in duration [40 CFR 270.61(b)(2)]. It may be terminated by the regulator at any time if he or she determines that termination is appropriate to protect human health and the environment [40 CFR 270.61(b)(4)].
Contents of Permit	The permit must clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage or disposal [270.61(b)(3)]. It must incorporate, to the extent possible and consistent with the emergency situation, all applicable requirements of 40 CFR parts 270 and 264 [40 CFR 270.61(b)(6)].
Public Notice	The emergency permit must be accompanied by a public notice published under 40 CFR 124.11(b) including: the name and address of the office granting the emergency authorization; the name and location of the permitted HWM facility; a brief description of the wastes involved; a brief description of the action authorized and reasons for authorizing it; and the duration of the emergency permit [40 CFR 270.61(b)(5)].

- * An emergency permit may be issued to a non-permitted facility to allow treatment, storage, or disposal of a hazardous waste, or to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

exclusion relieves persons from obtaining a RCRA permit for treatment or containment activities taken during immediate response to any of the following situations:

- A discharge of hazardous waste;
- An imminent and substantial threat of a discharge of hazardous waste; and
- A discharge of a material which, when discharged, becomes a hazardous waste.

Once the immediate response is completed, however, RCRA permitting requirements are applicable [40 CFR 270.1(c)(3)(ii)].

MODULE 5-2: Research, Development, and Demonstration (RD&D) Permits

RD&D Permits Are for
Technologies/Processes for
Which Permit Standards
Have Not Been Issued

Exhibit 5-2 summarizes the regulatory requirements applicable to RD&D permits. In practice, these permits are rarely used because they are applicable to innovative and experimental hazardous waste treatment technologies or processes for which permit standards have not been promulgated (see Exhibit 5-2).

- Many innovative and experimental technologies or processes involve thermal destruction; however, regulators may decline to issue RD&D permits for thermal destruction technologies because they believe that the incinerator or boilers and industrial furnaces permit standards are applicable to the use of these technologies or processes.
- Some innovative and experimental technologies or processes occur in tanks or containers. Consequently, some regulators may believe that the permit standards applicable to tanks or containers are applicable to the use of innovative and experimental technologies or processes occurring in tanks or containers.

Time Limit

Also, the one-year duration of an RD&D permit serves as an impediment to its wider use, even though the permit can be renewed up to three times (see Exhibit 5-2).

EXHIBIT 5-2
**REGULATORY REQUIREMENTS APPLICABLE TO RESEARCH,
DEVELOPMENT, AND DEMONSTRATION (RD&D) PERMITS (40 CFR 270.65)**

Type of Requirement	Requirement
Criterion for Issuance of an RD&D Permit	RD&D permits may be issued for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards have not been promulgated [40 CFR 270.65(a)].
Permit Application and Issuance Requirements	Permit application and permit issuance requirements in 40 CFR parts 124 and 260 may be modified or waived except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance)* or of procedures regarding public participation [40 CFR 270.65(b)].
Contents of Permit	<p>The permit must include such terms and conditions as will assure protection of human health and the environment [40 CFR 270.65(a)]. In particular, the permit must:</p> <ul style="list-style-type: none"> • Provide for the construction of necessary facilities [40 CFR 270.65(a)(1)]; • Provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the regulator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment [40 CFR 270.65(a)(2)]; and • Include requirements that the regulator deems necessary to protect human health and the environment (including, but not limited to requirements regarding monitoring, operation, financial responsibility,* closure, and remedial action), and such requirements as the regulator deems necessary regarding testing and providing of information to the regulator with respect to the operation of the facility [40 CFR 270.65(a)(3)].
Duration/Term of Permit	<p>The permit must provide for the operation of the facility for not longer than one year (270.65(a)(1)). However, the permit may be renewed up to three times. Each renewal must not be for a period of more than one year [40 CFR 270.65(d)].</p> <p>The regulator may order an immediate termination of all operations at the facility at any time he or she determines that termination is necessary to protect human health and the environment [40 CFR 270.65(c)].</p>

* DOE is exempt from financial responsibility requirements.

MODULE 5-3: Post-Closure Permits

Post-Closure Permits
Address Post-Closure
Care

DOE must obtain a RCRA post-closure permit for the performance of post-closure care at all currently operating permitted and interim status units where wastes will remain in place after closure. These units are listed below.

A post-closure permit details the requirements for the performance of post-closure care and contains all of the conditions applicable to the permit, such as its duration and recordkeeping requirements [40 CFR 270.32(a)]. Post-closure care encompasses all monitoring and maintenance activities that must be performed during the post-closure period (40 CFR 264.117-264.120, 40 CFR 265.117-265.120).

Post-Closure Care is
Required at Currently
Operating Units

Post-closure care must be performed at currently operating:

- hazardous waste landfills, disposal surface impoundments, and land treatment units; and
- tank systems, drip pads, waste piles, surface impoundments, and miscellaneous units (e.g., open burning/open detonation units) where all waste residues and contaminated soils, materials, components, subsoils, or structures cannot be removed or decontaminated [40 CFR 264.110, 40 CFR 265.110, 40 CFR 264.603, 40 CFR 270.14(b)(13)].

Post-Closure Care is
Required at Closed Units

Post-closure care and a post-closure permit are required for closed units where wastes remained in place after closure if such units received waste after July 26, 1982, or certified closure after January 26, 1983. Post-closure permits are also required for interim status units where wastes remain in place after closure if:

- closure occurs before an operating permit is issued, or
- an operating permit is denied [40 CFR 270.1(c)].

Regulatory
Requirements
Applicable to Post-
Closure Permit
Applications are Not
Detailed

Regulations applicable to the contents of post-closure permit applications are vague, specifying only that they contain all of the necessary information to address

requirements applicable to groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements [40 CFR 270.1(c)]. Exhibit 5-3 lists the information that should, at a minimum, be included in post-closure permit applications to address these requirements.

Additional information on post-closure permits is available in the DOE Information Brief entitled RCRA Post-Closure Permits (EH-231-021/0293).

EPA and Authorized States
Are Finding it Difficult to
Issue Post-Closure Permits

EPA and authorized States do not have sufficient resources to issue post-closure permits to the thousands of facilities for which they are required. Given this situation, EPA's strategy has been to prioritize facilities for post-closure permitting.



EPA Has Proposed to Use
Alternative Authorities to
Impose Post-Closure Care
Requirements

On November 8, 1994, EPA proposed to replace the current requirement that interim status hazardous waste management facilities that close without obtaining an operating permit apply for and receive a post-closure permit (59 FR 55778-55793). The alternative provisions would allow regulators to either issue post-closure permits to these facilities or to use alternative authorities (e.g., RCRA § 3008(h) orders and CERCLA §§ 104, 106 and 122 orders) to impose post-closure requirements. In comments submitted to EPA on the proposed rule, DOE supported this change.

Find Out What the
Regulator Expects in a Post-
Closure Permit Application.

DOE managers responsible for units that require post-closure permits should contact their regulators to determine if the regulators want to negotiate post-closure permit requirements. If so, DOE managers should inquire as to when a post-closure permit application should be submitted and communicate to the responsible regulatory agency the

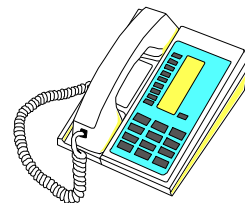


EXHIBIT 5-3
MINIMUM INFORMATION REQUIRED IN RCRA
POST-CLOSURE PERMIT APPLICATIONS
SUBMITTED BY DOE FACILITIES*

Information Required	Citation (40 CFR)
Copy of the post-closure inspection schedule	270.14(b)(5)
Floodplain information	270.14(b)(11)(iii-iv)
Copy of the post-closure plan	270.14(b)(13)
Documentation of the notice of former hazardous waste activity in the deed to the land	270.14(b)(14)
Applicable groundwater monitoring data and information demonstrating compliance with requirements for detection monitoring, compliance monitoring, and corrective action	270.14(c)
Information on solid waste management units and corrective action for releases from those units	264.101
Information on the potential for the public to be exposed to hazardous wastes or hazardous constituents from releases from hazardous waste management units	270.10(j)

* This exhibit is based on a Memorandum on Post-Closure Permit Part B Information Requirements from the Director of the Permits and State Programs Division, U.S. Environmental Protection Agency, to Waste Management Division Directors, Regions I-X, U.S. Environmental Protection Agency, November 18, 1985.

Department's suggestions for the contents of the permit application. (DOE managers should seek concurrence from the responsible regulatory agency regarding information that should be submitted in addition to the information listed on Exhibit 5-3.)

[This Page Intentionally Blank]

REFERENCES

Statutes

Comprehensive Environmental Response, Compensation, and Liability Act, P.L. 96-510, as amended.

Clean Water Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended.

Marine Protection, Research, and Sanctuaries Act of 1972, P.L. 92-532, as amended.

Resource Conservation and Recovery Act, P.L. 94-580, as amended.

Safe Drinking Water Act, P.L. 93-523, as amended.

Regulations

40 CFR Part 264, "EPA Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities."

40 CFR Part 265, "EPA Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Units."

40 CFR Part 270, "EPA Administered Permit Programs: The Hazardous Waste Management Program."

Federal Register

59 FR 55778, "Proposed rule and request comment: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority" (November 8, 1994).

Other Publications

U.S. Department of Energy, Office of Policy and Assistance, "RCRA Post-Closure Permits" [DOE/EH-231-021/0293 (February 1993)].

[This Page Intentionally Blank]

CHAPTER 5 INDEX

boilers and industrial furnaces	5-1, 5-2, 5-6
Clean Water Act	5-1
containers	5-6
Emergency permits	5-1, 5-3
modification	5-1
exclusions	5-3, 5-5
incinerators	5-1, 5-2, 5-6
interim status	5-8, 5-9
land treatment demonstrations	5-1, 5-2
NPDES permits	5-1
Part B permit application	5-1
Post-closure permit	5-1
corrective action	5-9
groundwater monitoring	5-9
modification	5-1
post-closure care	5-8, 5-9
requirement to obtain	5-8, 5-9
RCRA permit	
Special forms	5-1
Research, Development and Demonstration permits	5-1, 5-6
modification	5-1
state authorization	5-9
tanks	5-6
UIC interim permits	5-1, 5-2

[This Page Intentionally Blank]